United Nations S/AC.47/2010/5

Security Council

Distr.: General
12 March 2010

Original: English

Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan

Note verbale dated 8 February 2010 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan and has the honour to refer to the provisions of resolution 1891 (2009) adopted by the Security Council on 13 October 2009.

The Permanent Mission of Australia has the honour to provide the Chairman with a report on the actions taken by Australia to implement the measures imposed by resolutions 1591 (2005) and 1556 (2004), pursuant to paragraph 5 of resolution 1891 (2009) (see annex).

10-27134 (E) 180310

Please recycle

Annex to the note verbale dated 8 February 2010 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

Report of Australia to the Sudan sanctions Committee pursuant to paragraph 5 of Security Council resolution 1891 (2009) of 13 October 2009

Paragraph 5 of resolution 1891 (2009), adopted on 13 October 2009 by the Security Council,

> *Encourages* all States, in particular those in the region, to report to the Committee on the actions they have taken to implement measures imposed by resolutions 1591 (2005) and 1556 (2004).

The present report describes the steps taken by Australia to implement those resolutions.

Arms embargo

Paragraph 7 of resolution 1556 (2004) as supplemented by paragraph 7 of resolution 1591 (2005) is implemented in Australia by regulation 8 of the *Charter of the United Nations (Sanctions-Sudan) Regulations 2008* (Sudan Regulations), and regulation 13CM of the *Customs (Prohibited Exports) Regulations 1958*.

Regulation 8 of the Sudan Regulations prohibits the supply, sale or transfer of arms or related materiel to Sudan, without a permit issued by the Minister for Foreign Affairs or validly issued under the law of another country in compliance with its obligations under resolution 1556 (2004) and resolution 1591 (2005). Regulation 8 applies to any person in Australia, any Australian anywhere in the world, and any person who uses the services of an Australian ship or aircraft to supply, sell or transfer arms or related materiel to Sudan. Regulation 8 also applies to a body corporate which has effective control over another body corporate or entity, wherever incorporated or situated, that breaches the arms embargo against Sudan.

Consistent with paragraph 9 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005), regulation 9 of the Sudan Regulations provides that the Minister for Foreign Affairs may grant a permit to supply, sell or transfer arms and related materiel to Sudan in the following circumstances:

- supplies for monitoring, verification or peace support operations, including such operations led by regional organizations, that are authorized by the United Nations or are operating with the consent of the relevant parties (regulation 9(2)(a));
- supplies of non-lethal military equipment intended solely for humanitarian use, human rights monitoring or protective use (regulation 9(2)(b));
- supplies of protective clothing, including flak jackets and military helmets, for the personal use of United Nations personnel, human rights monitors, representatives of the media and humanitarian and development workers and associated personnel (regulation 9(2)(c));

- supplies provided in support of implementation of the Comprehensive Peace Agreement (regulation 9(2)(d)); and

- the movement of military equipment and supplies into the Darfur region that are approved in advance by the Committee established under paragraph 3 (a) upon a request by the Government of Sudan (regulation 9(2)(e)).

The Minister must not grant a permit to any non-governmental entity or individual operating in North Darfur, South Darfur or West Darfur, or to a party to the N'djamena Ceasefire Agreement, or to any belligerent in North Darfur, South Darfur or West Darfur.

The exportation of arms and related materiel to Sudan, without the written permission of the Foreign Minister or an employee of the Department of Foreign Affairs and Trade authorized to give permission on behalf of the Minister, is also prohibited by regulation 13CM of the *Customs (Prohibited Exports) Regulations 1958*.

Technical training and assistance

Paragraph 8 of resolution 1556 (2004) as supplemented by paragraph 7 of resolution 1591 (2005) is implemented in Australia by regulation 10 of the Sudan Regulations. Regulation 10 of the Sudan Regulations prohibits the provision to Sudan of technical training and assistance related to the provision, manufacture, maintenance or use of arms and related materiel, without a permit issued by the Minister for Foreign Affairs, or validly issued under the law of another country in compliance with its obligations under resolution 1556 (2004) and resolution 1591 (2005). Regulation 10 applies to all persons in Australia, any Australian anywhere in the world, and to a body corporate which has effective control over another body corporate or entity, wherever incorporated or situated, that provides technical training and assistance to Sudan, related to the provision, manufacture, maintenance or use of arms and related materiel.

Consistent with paragraph 9 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005), regulation 11 of the Sudan Regulations provides that the Minister for Foreign Affairs may grant a permit authorizing the provision of technical training and assistance to Sudan, in the following circumstances:

- technical training and assistance for monitoring, verification or peace support operations, including such operations led by regional organizations, that are authorized by the United Nations or are operating with the consent of the relevant parties (regulation 11(2)(a));

- technical training and assistance related to supplies of non-lethal military equipment intended solely for humanitarian use, human rights monitoring or protective use (regulation 11(2)(b)); and

- assistance provided in support of implementation of the Comprehensive Peace Agreement (regulation 11(2)(c)).

The Minister must not grant a permit to any non-governmental entity or individual operating in North Darfur, South Darfur or West Darfur, or to a party to the N'djamena Ceasefire Agreement, or to any belligerent in North Darfur, South Darfur or West Darfur.

Financial measures

Paragraph 3 (e) of resolution 1591 (2005), imposing financial sanctions on Sudan, is implemented in Australia by regulations 12 and 13 of the Sudan Regulations.

Regulation 12 of the Sudan Regulations prohibits making an asset available, directly or indirectly, to, or for the benefit of, a person designated by the Committee or the Security Council for the purposes of subparagraph 3 (c) of resolution 1591, or to a person acting on behalf of or at the direction of a designated person, or an entity owned or controlled, directly or indirectly, by a designated person.

Regulation 13 of the Sudan Regulations prohibits a person who holds an asset that is, directly or indirectly, owned or controlled by a designated person, or a person acting on behalf of or at the direction of a designated person, or an entity owned or controlled, directly or indirectly, by a designated person, from using or dealing with the asset, or allowing the asset to be used or dealt with, or facilitating the use of, or the dealing with, the asset.

Consistent with paragraph 3 (g) of resolution 1591 (2005), regulation 14 of the Sudan Regulations provides that the Minister for Foreign Affairs may grant a permit authorizing a transaction prohibited by regulations 12 or 13, only for a purpose provided for in regulation 14 (2) and regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, which mirror the exceptions set out in paragraph 3 (g) of resolution 1591 (2005).

Penalties for breach of regulations 8, 10, 12 and 13 of the Sudan Regulations

Regulations 8, 10, 12 and 13 of the Sudan Regulations have been specified by the Minister for Foreign Affairs as "UN sanction enforcement laws". Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under a United Nations sanction enforcement law (such as a permit granted under regulation 9) is an offence under section 27 of the *Charter of the United Nations Act 1945*. The maximum penalties upon conviction for such an offence are, for individuals, 10 years' imprisonment or a fine the greater of 2,500 penalty units or three times the value of the transaction (if this can be calculated). For a body corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions and exercised due diligence, to avoid contravening the law. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or three times the value of the transaction (if this can be calculated). As at 8 February 2010, a penalty unit is equivalent to AUS$ 110 under section 4AA of the Commonwealth Crimes Act 1914.

Travel measures

Paragraph 3 (d) of resolution 1591 (2005), imposing a travel ban on designated persons, is implemented in Australia by the *Migration (United Nations Security Council Resolutions) Regulations 2007*, which specify that a person who is or becomes the subject of specified resolutions of the Security Council that require Australia to prevent that person entering or transiting through Australian territory is unable to be granted a visa or, if a visa has already been granted, may have his or her visa cancelled, consistent with the obligations in the relevant Security Council resolution. The Minister for Immigration and Citizenship specifies, by legislative

instrument, the relevant resolutions to be covered by the Regulations. Resolution 1591 (2005) has been specified in respect of the Sudan.

The Department of Immigration and Citizenship maintains a Movement Alert List, which includes the names of non-citizens whose eligibility for a visa grant or continuing eligibility to hold a visa may be an issue. All persons designated by the Committee as being subject to travel measures, under paragraph 3 (c) of resolution 1591 (2005), are included on the Movement Alert List. The names of all visa applicants are checked against the List prior to any decision to grant a visa to enter Australia. The List is electronically accessible to officers of the Department of Immigration and Citizenship posted to Australia's diplomatic and consular missions worldwide, although the matching process has been centralized in the Border Operations Centre (BOC) in the Department of Immigration and Citizenship's National Office. Additional checks are also undertaken at Australian entry points to ensure that any person put on the List subsequent to a visa grant is identified.

Where there may be a potential match between a visa applicant and an individual listed on the Movement Alert List, further enquiries must be made before a visa can be granted, or, if it has already been granted, to consider whether it can or must be cancelled. Led by the Department of Immigration and Citizenship, this is a consultative process including many government bodies, which aims to resolve the Movement Alert List alert by examining available data on both applicants and individuals on the List.